

Andrew Sklar, Esquire (AS3105)
1200 Laurel Oak RD., Ste 102
Voorhees, NJ 08043
(856)258-4050
Attorneys for Trustee/Plaintiff

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In the Matter of:	:	IN PROCEEDING UNDER CHAPTER 7
Cary Smith	:	OF THE U.S. BANKRUPTCY CODE
	:	
Barry Sharer, Trustee	:	CASE NO.: 14-34878-CMG
Plaintiff	:	
	:	
v.	:	
Donald Popowski, individually	:	ADVERSARY NO.: 15-2007
and d/b/a JNC Enviromental Services:	:	
Debtors.	:	
	:	

NOTICE OF MOTION FOR AN ORDER TO ENFORCE LITIGANT'S RIGHTS

To: Donald popowski, d/b/a JNC Enviromental Services
102 Deerwood Dr
Trenton, NJ 08619-1851

The Plaintiff, through his attorney, has filed papers with the court to seek an order to Enforce Litigant's Rights in the within proceeding.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to enter the requested Order, or if you want the court to consider your views on the motion, then on or before January 26, 2016 you or your attorney must:

- File with the court a written response, an answer, explaining your position at:

United States Bankruptcy Court
Clarkson S. Fisher U.S. Courthouse
402 East State St.
Trenton, New Jersey 08608

- If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also mail a copy to:

Andrew Sklar, Esquire
Sklar Law, LLC
1200 Laurel Oak Road, Ste 102
Voorhees, New Jersey 08043
(Attorneys for the Trustee)

-and-

Office of the United States Trustee
U.S. Department of Justice
One Newark Center, Suite 2100
Newark, NJ 07102

- Attend the hearing scheduled to be held on May 14, 2013 at 10:00 a.m. at the United States Bankruptcy Court, Mitchell Cohen Federal Court House, 1 John F. Gerry Plaza, 4th & Cooper Streets, Camden, New Jersey, 08101.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

/s/ Andrew Sklar
Andrew Sklar, Esquire
Sklar Law, LLC
1200 Laurel Oak Road – Ste 102
Voorhees, New Jersey 08043
(Attorneys for Chapter 7 Trustee)

Dated: December 21, 2015

Andrew Sklar, Esquire (AS3105)
1200 Laurel Oak RD., Ste 102
Voorhees, NJ 08043
(856)258-4050
Attorneys for Trustee/Plaintiff

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In the Matter of:	:	IN PROCEEDING UNDER CHAPTER 7
Cary Smith	:	OF THE U.S. BANKRUPTCY CODE
	:	
Barry Sharer, Trustee	:	CASE NO.: 14-34878-CMG
Plaintiff	:	
	:	
v.	:	
Donald Popowski, individually	:	ADVERSARY NO.: 15-2007
and d/b/a JNC Enviromental Services:	:	
Debtors.	:	
	:	

**CERTIFICATION IN SUPPORT OF MOTION TO ENFORCE LITIGANT'S
RIGHTS**

I, Andrew Sklar, Esquire, of full age, hereby certify as follows:

1. I am the attorney for the Chapter 7 Trustee in the within case and move to enforce the rights of the trustee as a litigant in this adversary proceeding.
2. On June 22, 2015 an adversary complaint was filed with the United States Bankruptcy Court for the District of New Jersey, and Default Judgment was entered in favor of the trustee for \$44,556.50 on September 21, 2015.
3. The Federal Rule of Bankruptcy Procedure 7069 states that "[r]ule 69 F.R.Civ.P applies in adversary proceedings."
4. F.R.Civ.P 69(a)(2) allows:

In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain

discovery from any person—including the judgment debtor—as provided in these rules *or* by the procedure of the state where the court is located. (Emphasis added)

5. Pursuant to F.R.Civ.P 69(a)(2) Plaintiff served an information subpoena upon the defendant in accordance with New Jersey Rule of Court 6:7-2(b)(1) which allows that “[a]n information subpoena may be served upon the judgment debtor, without leave of court...” and “the answers to the written questions annexed thereto shall be returned to the...judgment creditor’s attorney within 14 days after service thereof.”

6. On November 2, 2014 Plaintiff served an information subpoena in conformance with New Jersey Rule of Court 6:7-2(b)(1) and F.R.Civ.P.69(a)(2) to the defendant by sending the information subpoena simultaneously by both regular and certified mail return, receipt, requested. A copy of the information subpoena mailed to the defendant is annexed hereto as Exhibit A and made a part hereof.

7. The regular mail has been returned to my office marked “unclaimed”, and the regular mail has not been returned. A copy of the certified mail envelope is annexed hereto as Exhibit B and made a part hereof.

8. New Jersey Rule of Court 6:7-2(e) provides that “[p]roceedings to seek relief...when a judgment-debtor fails to obey an...information subpoena, shall be commenced by notice of motion supported by affidavit or certification.”

9. New Jersey Rule of Court 6:7-2(e) further instructs that the following notices be given to the defendant:

A. The defendant has violated the litigant’s rights of the plaintiff by failing to comply with the information subpoena.

B. The defendant is compelled to immediately furnish answers as required by the information subpoena.

C. If the defendant fails to appear in court on the return date or to furnish the required answers he/she shall, by order of the court, be arrested and confined until he/she has complied with the information subpoena.

D. If the defendant fails to appear in court on the return date, the defendant may be ordered to pay the attorney fees, if any, in connection with the motion to enforce litigant's rights.

E. The court may grant such other relief as may be appropriate.

10. The order enforcing litigant's rights is governed by New Jersey Rule of Court 6:7-2(f):

If the judgment-debtor has failed to appear in court on the return date and the court enters an order to enforce litigant's rights, it shall be in the form set forth in Appendix XI-O to these Rules and shall state that upon the judgment-debtor's failure, within 10 days of the certified date of mailing or personal service of the order, to comply with the information subpoena or discovery order, the court will issue an arrest warrant. The judgment-creditor shall serve a copy of the signed order upon the judgment-debtor either personally or by mailing it simultaneously by regular and certified mail, return receipt requested. The date of mailing or personal service shall be certified on the order.

11. New Jersey Rule of Court 6:7-2(g) provides that if a defendant fails to respond to the information subpoena after an order enforcing litigant's rights has been issued by the court then a warrant for the defendant's arrest may be issued. Upon service of the arrest warrant then the defendant is brought to the court to answer the questions on the information subpoena, and thereafter be released.

12. The defendant has failed to answer the information subpoena served upon him by the trustee in the time allowed.

13. The information subpoena was promulgated by the plaintiff in full accordance with the Rules of Court.

14. The information subpoena was promulgated in aid of execution on a judgment entered in an adversary proceeding to acquire assets due to the Chapter 7 Bankruptcy Estate.

15. For the reasons set forth above the Plaintiff respectfully requests that this Court grant the following relief:

- A. Issue an Order Enforcing Litigant's Rights in favor of the Plaintiff; and
- B. Order the defendant to pay the plaintiff's attorney's fees in connection with this motion; and
- C. Order that if the defendant fails to provide responses to the information subpoena within 10 days of the service of this order, a warrant for the defendant's arrest shall issue; and
- D. Such other relief which this Court deems just and fair.

I hereby certify that the foregoing statement are true and correct to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

/s/ Andrew Sklar
Andrew Sklar, Esquire
Attorney for Trustee

Dated: December 21, 2015

EXHIBIT A

SKLAR LAW, LLC

1200 Laurel Oak Road – Suite 102
Voorhees, New Jersey 08043

ANDREW SKLAR

Member NJ and PA Bars

TEL: 856-258-4050

FAX: 856-258-6941

Website: www.sklarlaw.com

November 2, 2015

VIA REGULAR AND CERTIFIED MAIL, R.R.R

Donald Popowski
d/b/a JNC Environmental Services
102 Deerwood Dr.
Trenton, NJ 08619-1851

Re: **Cary Smith**
Case No.: 14-34878 – CMG
Barry Sharer, Trustee vs. Donald Popowski, individually and d/b/a JNC
Environmental Services
Adversary No.: 15-2007

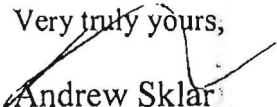
Dear Mr. Popowski:

Enclosed please find an Information Subpoena which is being sent to you pursuant to the Rules of Civil Practice of New Jersey.

Your written answers, certified by the above named defendants, must be returned to this office within fourteen (14) days after you receive this.

If you fail to answer and return this Information Subpoena, you will be subject to further court action against you which may ultimately result in YOUR ARREST AND CONFINEMENT until such time as you comply with this Information Subpoena.

Very truly yours,


Andrew Sklar
Andrew Sklar Esquire

AS/har

Disclosure

You are hereby advised, pursuant to the Fair Debt Collection Practices Act, that this firm is deemed to be a debt collector attempting to collect a debt and any information obtained will be used for that purpose.

**FAILURE TO COMPLY WITH THIS INFORMATION SUBPOENA
MAY RESULT IN YOUR ARREST AND INCARCERATION**

Andrew Sklar, Esquire (AS3105)
Sklar Law, LLC
1200 Laurel Oak Rd, Suite 102
Voorhees, NJ 08043
856/258-4050
Attorneys for Trustee/Plaintiff

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In Re: Cary Smith <hr/> Barry Sharer, Trustee Plaintiff vs. Donald Popowski, individually and d/b/a JNC Environmental Services Defendant(s).	Case No.: 14-34878 – CMG Adversary No.: 15-2007 <u>INFORMATION SUBPOENA</u>
---	--

THE STATE OF NEW JERSEY, to:
Donald Popowski,
d/b/a JNC Environmental Services
102 Deerwood Dr.
Trenton, NJ 08619-1851

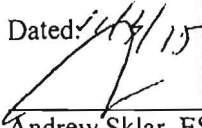
Judgment has been entered against you in the United States Bankruptcy Court, District of New Jersey, on September 21, 2015, in the amount of \$44,556.50, plus costs and attorney fees for a total of \$44,556.50 of which \$44,556.50 remains due and unpaid.

Attached to this Information Subpoena is a list of questions that court rules require you to answer within 14 days from the date you receive this subpoena. If you do not answer the attached questions within the time required, the opposing party may ask the court to conduct a hearing in order to determine if you should be held in contempt. You will be compelled to appear at the hearing and explain your reasons for your failure to answer.

If this judgment has resulted from a default, you may have the right to have this default judgment vacated by making an appropriate motion to the court. Contact an attorney or the clerk of the court for information on making such a motion. Even if you dispute the judgment you must answer all of the attached questions.

You must answer each question giving complete answers, attaching additional pages if necessary. False or misleading answers may subject you to punishment by the court. However, you need not provide information concerning the income and assets of other living in your household unless you have a financial interest in the assets or income. Be sure to sign and date your answers and return them to the address in the upper left hand corner within 14 days.

Dated: 12/15/15


Andrew Sklar, ESQUIRE

/S/JENNIFER M. PEREZ
TEMPORARY ACTING CLERK

QUESTIONS FOR INDIVIDUALS

1. Full Name _____

2. Address _____

3. Birthdate _____

4. Social Security # _____

5. Driver's license # and expiration date _____

6. Telephone # _____

7. Full name and address of your employer _____

(a) Your weekly salary: Gross _____ Net _____

(b) If not presently employed, name and address of last employer _____

8. Is there currently a wage execution on your salary? ☐ Yes ☐ No

9. List the names, addresses and account numbers of all bank accounts on which your name appears.

Name	Address	Account No.

10. If you receive money from any of the following sources, list the amount, how often, and the name and address of the source:

Type	Amount & Frequency	Name and Address of Sources
Alimony		
Loan Payments		
Rental Income		
Pensions		
Bank Interest		
Stock Dividends		
Other		

11. Do you receive any of the following, which are exempt from levy? Any levy on disclosed exempt funds may result in monetary penalties including reimbursement of the debtor's out-of-pocket expenses.

Social Security benefits	Yes _____	Amount per month	No _____
S.S.I. benefits	Yes _____	Amount per month	No _____
Welfare benefits	Yes _____	Amount per month	No _____
V.A. benefits	Yes _____	Amount per month	No _____
Unemployment benefits	Yes _____	Amount per month	No _____
Workers' compensation benefits	Yes _____	Amount per month	No _____
Child support payments	Yes _____	Amount per month	No _____

12. Do you own the property where you reside? ☐ Yes ☐ No

If yes, state the following:

(a) Name of the owner or owners _____

(b) Date property was purchased _____

(c) Purchase price _____

(d) Name and address of mortgage holder _____

(e) Balance due on mortgage _____

13. Do you own any other real estate? ☐ Yes ☐ No

If yes, state the following for each property:

(a) Address of property _____

(b) Date property was purchased _____

(c) Purchase price _____

(d) Name and address of all owners _____

(e) Name and address of mortgage holder _____

(f) Balance due on mortgage _____

(g) Names and addresses of all tenants and monthly rental paid by each tenant

14. Does the present value of your personal property, which includes automobiles, furniture, appliances, stocks, bonds, and cash on hand, exceed \$1,000? ☐ Yes ☐ No

If the answer is "yes", you must itemize all personal property owned by you.

Cash on hand: \$ _____

Other personal property: (Set forth make, model and serial number. If financed, give name and address of party to whom payments are made).

<u>Item</u>	<u>Date Purchased</u>	<u>Purchase Price</u>	(If Financed)	
			<u>Balance Still Due</u>	<u>Present Value</u>

15. Do you own a motor vehicle? ☐ Yes ☐ No If yes, state the following for each vehicle owned:

(a) Make, model and year of motor vehicle

(b) If there is a lien on the vehicle, state the name and address of the lienholder and the amount due to the lienholder

(c) License plate #

(d) Vehicle identification #

16. Do you own a business? ☐ Yes ☐ No If yes, state the following:

(a) Name and address of the business

(b) Is the business a: ☐ corporation; ☐ sole proprietorship; ☐ partnership; or ☐ limited liability company?

(c) The name and address of all stockholders, officers, members and/or partners:

Name	Address

(d) The amount of income received by you from the business during the last twelve months

17. Set forth all other judgments that you are aware of that have been entered against you and include:

Creditor's Name	Creditor's Attorney	Amount Due	Name of Court	Docket Number

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: _____

Signature _____

QUESTIONS FOR BUSINESS ENTITY

1. Name of business including all trade names. _____

2. Addresses of all business locations. _____

3. If the judgment-debtor is a corporation, the names and addresses of all stockholders, officers and directors.

4. If a partnership, list the names and addresses of all partners.

5. If a limited partnership, list the names and addresses of all general partners.

6. Set forth in detail the name, address and telephone number of all businesses in which the principals of the judgment-debtor now have an interest and set forth the nature of the interest.

7. For all bank accounts of the judgment-debtor business entity, list the name of the bank, the bank's address, the account number and the name in which the account is held.

8. Specifically state the present location of all books and records of the business, including checkbooks.

9. State the name and address of the person, persons, or entities who prepare, maintain and/or control the business records and checkbooks.

10. List all physical assets of the business and their location. If any asset is subject to a lien, state the name and address of the lienholder and the amount due on the lien.

11. Does the business own any real estate? Yes ___ No ___ If yes, state the following for each property:

- (a) Name(s) in which property is owned _____
(b) Address of property _____
(c) Date property was purchased _____
(d) Purchase price _____
(e) Name and address of mortgage holder _____

- (f) Balance due on mortgage _____
- (g) The names and addresses of all tenants and monthly rentals paid by _____ each tenant.

NAME AND ADDRESS OF TENANT	MONTHLY RENTAL
----------------------------	----------------

12. List all motor vehicles owned by the business, stating the following for each vehicle:

- (a) Make, model and year _____
- (b) License plate number _____
- (c) Vehicle identification number _____
- (d) If there is a lien on the vehicle, the name and address of the lienholder and the amount due on the lien _____

13. List all accounts receivable due to the business, stating the name, address and amount due on each receivable.

NAME AND ADDRESS	AMOUNT DUE
------------------	------------

14. For any transfer of business assets that has occurred within six months from the date of this subpoena, specifically identify:

- (a) The nature of the asset _____
- (b) _____
- The date of transfer _____
- (c) Name and address of the person to whom the asset was transferred _____
- (d) The consideration paid for the asset and the form in which it was paid (check, cash, etc.) _____
- (e) Explain in detail what happened to the consideration paid for the asset _____

15. If the business is alleged to be no longer active, set forth:

- (a) The date of cessation _____
- (b) All assets as of the date of cessation _____
- (c) The present location of those assets _____
- (d) If the assets were sold or transferred, set forth: _____

- (1) The nature of the assets _____
- (2) Date of transfer _____
- (3) Name and address of the person to whom the assets were transferred _____
- (4) The consideration paid for the assets and the form in which it was paid _____
- (5) Explain in detail what happened to the consideration paid for _____ the assets _____
16. Set forth all other judgments that you are aware of that have been entered against the business and include the following:
- | Creditor's Name | Creditor's Attorney | Amount Due | Name of Court | Docket Number |
|-----------------|---------------------|------------|---------------|---------------|
| | | | | |
17. For all litigation in which the business is presently involved, state:
- (a) Date litigation commenced _____
- (b) Name of party who started the litigation _____
- (c) Nature of the action _____
- (d) Names of all parties and the names, addresses and telephone numbers of their attorneys _____
- (e) Trial date _____
- (f) Status of case _____
- (g) Name of the court and docket number _____
18. State the name, address and position of the person answering these questions. _____

I
hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: _____

[Note: Former Appendix XI-K adopted June 29, 1990, effective September 4, 1990; amended July 14, 1992, effective September 1, 1992; redesignated as Appendix XI-L and amended July 13, 1994, effective September 1, 1994; amended July 28, 2004 to be effective September 1, 2004.]

7015 0640 0001 0457 4707

U.S. Postal Service®
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee		Postmark Here 11-4-15
\$		
Extra Services & Fees (check box, add fee as appropriate)		
<input type="checkbox"/> Return Receipt (hardcopy)	\$	
<input type="checkbox"/> Return Receipt (electronic)	\$	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$	
<input type="checkbox"/> Adult Signature Required	\$	
<input type="checkbox"/> Adult Signature Restricted Delivery	\$	
Postage		
\$		
Total Postage	Donald Popowski,	
\$	d/b/a JNC Environmental Services	
Sent To	102 Deerwood Dr.	
Street and	Trenton, NJ 08619-1851	
City, State		

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

EXHIBIT B

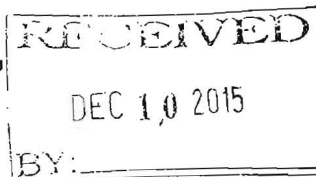
SKLAR LAW, LLC
1200 LAUREL OAK ROAD, SUITE 102
VOORHEES, NJ 08043

CERTIFIED MAIL®



7015 0640 0001 0457 4707

Handwritten: LN 11/6/15



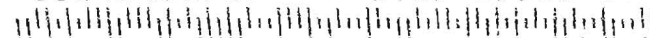
Donald Popowski
d/b/a JNC Environmental Services
102 Deerwood
Trenton, NJ 08

NIXIE 076 DE 1 0012/05/15

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

EC: 08043431727 *0403-05368-04-36

0801080650431722



UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY Caption in Compliance with D.N.J. LBR 9004-2(c) Andrew Sklar, Esquire (AS3105) Sklar-Markind 102 Browning Lane, Bldg B – Suite 1 Cherry Hill, New Jersey 08003 (856) 616-8710 Chapter 7 trustee	
In Re: Cary Smith	Case No.: 14-34878 (GMC) Adv. No.: 15-2007 (GMC) Hearing Date: Judge: CHRISTINE M. GRAVELLE
BARRY SHARER, TRUSTEE Plaintiff v. DONALD POPOWSKI, individually and d/b/a JNC ENVIROMENTAL SERVICES Defendant	

ORDER ENFORCING LITIGANT'S RIGHTS

The relief set forth on the following pages, numbered two (2) through (2) is hereby **ORDERED**.

(PAGE 2)

Debtor: CARY SMITH
Defendant: Donald Popowski individually and d/b/a JNC Enviromental Services
Case No.: 14-34878-CMG
Adv. Pro. No.: 15-2007-CMG
Caption: Order TO ENFORCE LITIGANT'S RIGHTS

THIS MATTER having come before the Court upon the motion of Andrew Sklar, attorney for the Chapter 7 Trustee herein, for an Order to ENFORCE LITIGANT'S RIGHTS, and for good cause shown;

IT IS ORDERED that the defendant in the adversary proceeding has violated the rights of the plaintiff as a litigant; and

IT IS ORDERED that the Defendant shall furnish answers to the Information Subpoena within ten (10) days of service of this order; and

IT IS ORDERED that if the Defendant fails to furnish said answers within ten (10) days of service of this order, a warrant for the arrest of the defendant shall issue upon application of the plaintiff.

IT IS ORDERED that the Defendant shall pay the plaintiff's attorney's fees in connection with this motion in the amount of \$_____.